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done in a rather desultory fashion, by reference to the law of nature, or the fundamental charters of English liberty, until, by a process of development, there finally emerged a well-defined doctrine of the fundamental constitutional law guarded by the judiciary.

From this preface, the next step is to show the feeling in the Constitutional Convention and the opinions of the leading members. The predominance of the sentiment for a judiciary with supreme power to decide on constitutional questions is clearly set forth. The author here acknowledges his debt to Professor Beard's work, "The Supreme Court and the Constitution," where the opinions of the members of the Convention are summarized. By an examination of the decisions in the federal courts preceding *Marbury v. Madison*, Professor Haines proves that these courts were influenced by the same political and governmental ideas as were the judges in the colonial and state courts. Therefore, the principle enunciated by Chief Justice Marshall in that case was no innovation.

If the theory that the courts usurped the power to declare laws unconstitutional were not overthrown by these cases and precedents, a complete refutation is furnished by the account of the various political conflicts which have resulted from the exercise of that power. This resumé certainly proves sufficiently that there was some deep-seated desire on the part of the American people for such supreme judicial control, a control which has remained unshaken in spite of the severe conflicts over the powers of the courts resulting from the many changes in political mastery.

The author then shows that by a sparing use of its power the Court had builded firmly in the respect of the people until the late demand for progressive legislation received severe checks from the Supreme Court of the United States. During this later period the respect for the Court's opinion has been weakened by assaults on its policy, first by dissenting judges and later by laymen. These opinions are summarized in the chapter upon Recent Criticisms.

For this situation the author offers no panacea, since his purpose is historical rather than controversial or critical. But may we join him in the hope which he suggests that "a restriction of the realm within which laws may be invalidated, an easier method of changing the fundamental law, and a less hostile attitude toward legislative innovations on the part of lawyers and judges, will remove the chief grounds of complaint against the judiciary with respect to what is termed judicial legislation, and will make it possible and desirable, even to those who believe in the ultimate rule of the people, to retain in state and federal government the power of the courts to invalidate acts as a salutary check upon hasty and careless legislation."

*James A. Fee, Jr.*

A TREATISE ON THE AMERICAN LAW RELATING TO MINES AND MINERAL LANDS. By CURTIS H. LINDLEY of the San Francisco Bar. San Francisco: BANCROFT-WHITNEY COMPANY. 1914. Vol. I, pp. cclii, 1-730; Vol. II, 731-1685; Vol. III, 1687-2813.

The first and second editions of this work edited by Mr. Lindley were published in 1897 and 1903 respectively. The publisher's plates of the second edition were destroyed in the general conflagration following the San Francisco earthquake of 1906. Since the editing of the second edition, many hitherto disputed questions have been finally de-

terminated by the courts and many new questions have arisen and been passed upon. Furthermore, during the period mentioned, there has been a marked change in governmental policy evidenced by the various national conservation measures.

This work is broad in its scope and systematically arranged. Titles I and II are introductory; in them the author devotes a few pages to the mining laws of foreign countries and gives a historical review of the development of the present system of mining law in this country, pointing out its elements of weakness and strength. The balance of the text outlines the method to be followed in acquiring and perfecting rights to mineral lands of the public domain (including coal, oil and gas, as well as the metallic minerals) and treats of the multitudinous questions incidental to the ownership and working thereof. Footnotes containing references to decisions and Federal and State statutes are given throughout the text.

Throughout, the volumes indicate exhaustive study and research. Substantially all of the questions that may give rise to disputes are treated thoroughly and systematically. The discussion and analysis of decisions is excellent and the author's conclusions are in every instance reached by clear and logical reasoning, supported by the authorities. Moreover, the work is not limited in its usefulness to any particular state, but is general in its scope; decisions, local district rules and statutes are given from all of the States and Territories containing public domain lands, and the text treats all localities with equal fullness.

Since the appearance of the first edition of this work, it has been considered one of the leading authorities on the subject; this revision was urgently required by the development of and changes in the law, and will unquestionably be very welcome to members of the profession engaged in the practice of mining law.

*H. Alexander Smith.*

#### BOOKS RECEIVED.

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COMMENTARIES ON THE LAW OF EVIDENCE IN CIVIL CASES. By BURR W. JONES of the Wisconsin Bar. Revised by L. HORWITZ. San Francisco: THE BANCROFT-WHITNEY Co. 1914. Vol. IV, pp. x, 976; Vol V, vi, 1156.

ROMAN PRIVATE LAW. By E. C. CLARK. Cambridge: CAMBRIDGE UNIVERSITY PRESS. 1914. pp. Vol. I, 1-432; Vol. II, 433-802.